

## REMARKS

### Group Election

In response to the Restriction Requirement, Applicants provisionally elect the Group II Claims 1-30, 32-36, and 38-41, drawn to an *in vivo* gene therapy methods for treating critical limb ischemia, class 424, subclass 93.2, with traverse.

### Species Election

In response to the first requirement for species election, Applicants provisionally elect the angiogenic factor of FGF, with traverse.

In response to the second requirement for species election, Applicants provisionally elect: eNOS polypeptide comprises a mutation at a position corresponding to amino acid residues 495 and 1177 of SEQ ID NO:1, with traverse.

### Claims Readable on the Group and Species Elections

Responsive to the Restriction Requirement and species election requirements, Applicants submit the following list of currently-pending claims (by claim number) readable thereon:

claims 1-4, 7, 9, 10, 12-30, 32-36, and 40.

### Traversal

Applicants submit that it would not be a serious burden on the Examiner to examine the claims of Groups I-III together. As such, Applicants submit that a thorough search of the claims for treating critical limb ischemia for either an *ex vivo* or *in vivo* method of gene therapy would yield substantially overlapping, if not identical search results. Similarly, methods of treatment of critical limb ischemia by administering eNOS polypeptide would be largely if not entirely

coextensive with methods treating the same condition using a polynucleotide encoding the eNOS polypeptide

Accordingly, reconsideration and withdrawal of the Restriction Requirement is respectfully requested.

The standard for determining whether a species election should be required is whether the species share a "commonality of operation, function or effect" (MPEP § 806.04(e)). The requirement to elect a species of angiogenic factors is traversed because, while the species as set forth are independent and patentably distinct, they share a "commonality of operation, function or effect." Specifically, each of the species affects angiogenesis. As such, the various species share a commonality of function and effect, and therefore, it is submitted that an election of one species should not be required and that the peptides should be examined together.

Similarly, the eNOS mutation species share a similarity: each of the species identified by the Examiner includes the mutation corresponding to amino acid residue 1177 of SEQ ID NO:1.

Accordingly, reconsideration and withdrawal of the requirement for species is respectfully requested.

Notwithstanding the traversal of the species election requirements, Applicants submit that upon allowance of a generic claim, Applicants should be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim, pursuant to 37 CFR § 1.141.

In re Application of:  
Dole et al.  
Application No.: 10/642,255  
Filed: August 15, 2003  
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PATENT  
Atty Docket No.: CARD1110-1

In light of the foregoing remarks, reconsideration and withdrawal of the Restriction Requirement is respectfully requested. Applicants believe that the entire application is in condition for allowance and such action is respectfully requested. If it is believed that prosecution can be assisted thereby, the Examiner is invited to contact Applicants' undersigned Representative at the below-listed telephone number.

A check in the amount of \$ 2,160.00 is enclosed as payment for the five-month Extension of Time fee. No other fee is deemed necessary with the filing of this paper. However, the Commissioner is hereby authorized to charge any fees that are required, or credit any overpayments to Deposit Account No. 07-1896 referencing the above-identified attorney docket number. A copy of the Transmittal Sheet is enclosed.

Respectfully submitted,

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